

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

FILED
NOV 05 2013
Clerk, U.S. District Court
District Of Montana
Missoula

CHRISTOPHER WAGNER,

CV 13-80-GF-DWM-RKS

Petitioner,

vs.

ORDER

MARTIN FRINK and the
ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondent.

This action was filed in the United States District Court for the District of Montana, Great Falls Division on September 17, 2013. Petitioner Christopher Wagner seeks a writ of *habeas corpus* under 28 U.S.C. § 2254. United States Magistrate Judge Keith Strong filed Findings and a Recommendation on October 15, 2013. Pursuant to 28 U.S.C. § 636(b)(1), objections to the Findings and Recommendation entered by Judge Strong were due by November 1, 2013. No objections were filed.

The Court reviews the findings and recommendation of a United States Magistrate Judge for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error is present only if the Court is left with a “definite and firm conviction that a mistake has been

committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

After a review of Judge Strong’s Findings and Recommendation, I find no clear error. Petitioner’s inmate trust account statement shows that he can afford to pay the \$5.00 filing fee. His motion to proceed *in forma pauperis* is accordingly denied. Wagner’s petition seeking a writ of *habeas corpus* is without merit and hereby dismissed. Petitioner seeks the writ because he was not given appointed counsel his petition for post-conviction relief before the state district court. There is no right to appointed counsel for collateral proceedings. *See Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309, 1319-20 (2012). Furthermore this Court lacks jurisdiction over Wagner’s petition because his claim does not challenge the his custody pursuant to a violation of “the Constitution or laws or treaties of the United States.” *See* 28 U.S.C. § 2254(a).

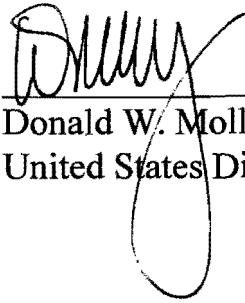
Based on the foregoing, IT IS ORDERED that Judge Strong’s Findings and Recommendations, (Doc. 4), are ADOPTED IN FULL. Petitioner’s Motion to Proceed *In Forma Pauperis*, (Doc. 2), is DENIED.

IT IS FURTHER ORDERED that Wagner’s Petition, (Doc. 1), is DISMISSED for lack of jurisdiction.

IT IS FURTHER ORDERED a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that the Clerk of Court shall enter by a separate document judgment of dismissal and shall close this case.

DATED this 5th day of November, 2013.

A handwritten signature in black ink, appearing to read 'DMolloy', is written over a horizontal line.

Donald W. Molloy, District Judge
United States District Court